Filed 5/17/19 In re J.P. CA1/4

**NOT TO BE PUBLISHED IN OFFICIAL REPORTS**



IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION FOUR

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| In re J.P., a Person Coming Under the Juvenile Court Law. | |
| THE PEOPLE,<br>Plaintiff and Respondent,<br>v.<br>J.P.,<br>Defendant and Appellant. | A154745<br><br>(Contra Costa County Super. Ct. No. J1800058) |

## MEMORANDUM OPINION[1]

In this juvenile delinquency appeal, appellant J.P. was found to have committed the offenses of attempted armed robbery (Pen. Code §§ 211, 664, 212.5 subd. (c)),[2] assault with a firearm (§ 245, subd. (a) (2)), possession of a firearm as a minor (§ 29610), and resisting arrest (§ 148, subd. (a)(1)), with enhancements for personal use (§ 12022.5, subd. (a)(1)) and discharge of a firearm (§ 12022.53, subd. (c)). The sole issue on appeal is whether there was sufficient evidence to support the court's identification of J.P. as the perpetrator of the offenses.

[1] We resolve this case by memorandum opinion pursuant to California Standards of Judicial Administration, section 8.1. (See also *People v. Garcia* (2002) 97 Cal.App.4th 847, 853–855.)

[2] All statutory references are to the Penal Code.

The victim, a homeless man, was groggy after having been pistol-whipped and as a result was unable to identify J.P. at an in-field show-up or at the hearing. He testified he had "doz[ed] off," and woke when a "young man" pointed a handgun at him and said "David, give me your money, all of it." He further testified that he replied he had no money and tried to get up, but the gunman hit him on the head with the gun, leaving him dazed and in shock. The gunman then pointed the gun toward the ground and fired about four shots as he ran away.

J.P., a Latino, was in eighth grade at the time of the offense.

One of two witnesses near the scene reported to police that he saw a 20- to 25-year old Latino wearing a dark hoodie with a gun, who took off running and then jumped in a white Nissan, which drove away. At the hearing, this witness described the man he saw—who he identified in court as J.P.—as a light-skinned Latino in a hoodie, wearing dark baggy pants who appeared to be 18-24 years of age, and was about five feet six or eight inches tall. A second witness near the scene heard shots and saw a man run away from where the shots were fired. According to this witness, the man jumped into a white Nissan, which drove off "really fast."

The police recovered spent cartridges at the scene where the victim was assaulted. Thirty minutes after the assault, the police stopped a white Nissan. J.P. emerged from the Nissan, took flight, tossed a gun away while running, and was eventually apprehended after a short chase. He was wearing a dark hoodie when arrested. Three other men in the Nissan were also arrested. A ballistics test matched the weapon J.P. discarded while fleeing. One of the other arrestees, D.D., had on a dark hoodie or coat and "very distinct" turquoise pants. Another arrestee, Z.J., who had been driving the van, was African-American, about five feet eight or ten inches tall, and had on a dark hoodie with big, red lettering and dark navy or black pants. Neither D.D. nor Z.J. had attempted to flee when police stopped the van.

Citing the well-known pitfalls of eyewitness identification testimony, J.P. advances an insufficiency of the evidence argument that relies heavily on *People v. Cuevas* (1995) 12 Cal.4th 252, 276–277 (*Cuevas*) [substantial evidence supported

conviction where witness provided physical description "similar" to other witness's "independent description of the gunman and generally consistent with defendant's appearance"]. Even though the result in *Cuevas* cuts against him, J.P. suggests that its reasoning requires reversal. He argues that in the absence of evidence "positively plac[ing]" him at the scene of the attempted robbery, an identification 30 minutes later, in a separate location, is "patently insufficient" to support the juvenile court's true findings under the substantial evidence test.

In a juvenile appeal claiming insufficiency of the evidence, we apply the same standard of review that we would apply in an adult criminal appeal. (*In re Ryan N.* (2001) 92 Cal.App.4th 1359, 1371.) We look at the entire record in the light most favorable to the judgment to see whether it discloses substantial evidence—evidence that is reasonable, credible, and of solid value such that a reasonable trier of fact could find the defendant guilty beyond a reasonable doubt. (*People v. Snow* (2003) 30 Cal.4th 43, 66.) "Substantial evidence includes circumstantial evidence and any reasonable inferences drawn from that evidence." (*People v. Clark* (2011) 52 Cal.4th 856, 943, internal quotation marks omitted.) Our role is a limited one. (*People v. Letner and Tobin* (2010) 50 Cal.4th 99, 161.) We " 'neither reweigh[] evidence nor reevaluate[] a witness's credibility.' " (*People v. Albillar* (2010) 51 Cal.4th 47, 60.) "Reversal . . . is unwarranted unless it appears 'that upon no hypothesis whatever is there sufficient substantial evidence to support [the judgment].' " (*People v. Bolin* (1998) 18 Cal.4th 297, 331.)

Applying these principles on this record, we will affirm. There is ample circumstantial evidence to corroborate the in-court identification here—specifically, the hoodie, ballistics evidence tying the weapon used in the assault to J.P., the white Nissan in which J.P was riding, the matching profile described by two witnesses, and J.P's conduct in fleeing to evade arrest. Nothing in *Cuevas* is to the contrary. We recognize and acknowledge the vagaries of eyewitness identification, particularly when it is cross-racial (it is unclear from record or from any of the arguments J.P. offers whether that could be a factor here). But granting that caution is sometimes warranted when dealing

with eyewitness identification testimony, we cannot agree with the proposition that, in the absence of evidence "positively" tying J.P. to the scene of the crime, the eyewitness identification testimony here is entitled to no weight or discounted weight in our process of scrutinizing the record for substantial evidence. The weight we give any form of evidence, whether it is eyewitness identification testimony or anything else, depends on how it fits into the rest of what we see. And on this record, there is plenty of other evidence to corroborate the victim's in-court identification of J.P. To the extent there were inconsistencies and weaknesses in this identifying testimony, those were for J.P. to argue to the fact-finder, not here on appeal.

**DISPOSITION**

Affirmed.

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STREETER, J.

We concur:

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POLLAK, P.J.

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BROWN, J.